

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JOSEPH LENTINE, III,

Plaintiff,

vs.

CINCINNATI METROPOLITAN  
HOUSING AUTHORITY, *et al.*,

Defendants.

Case No. 1:10-cv-474

Weber, J.  
Litkovitz, M.J.

**REPORT AND  
RECOMMENDATION<sup>1</sup>**

Plaintiff initiated this action on July 20, 2010 by filing a pro se complaint, pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights; plaintiff filed an amended complaint on August 13, 2010. (Docs. 1, 3). Between September 13 and October 22, 2010, the separate sets of defendants filed five distinct motions to dismiss plaintiff's complaint. (Docs. 9, 16, 20, 24, 29). After noting a typographical error relating to plaintiff's address, this Court granted plaintiff an additional thirty days, to November 13, 2010, by which to respond to the pending motions to dismiss. (Doc. 26). At that time, the Court directed the clerk to serve copies of all pending motions to the address provided by plaintiff in his complaint and amended complaint: 3545 Harvey Avenue, Suite 21000, Cincinnati, OH 45229. *Id.* This order was not returned to the Court as undeliverable. Thus, with the exception of the motion to dismiss filed by defendant Avondale Community Council on October 22, 2010<sup>2</sup>, all of defendants' pending motions to dismiss were mailed to plaintiff by the Court on October 14, 2010. Plaintiff failed to respond to any of defendants' pending motions within the prescribed time.

---

<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

<sup>2</sup> Pursuant to S.D. Ohio Civ. R. 7.2(a)(2), plaintiff's response in opposition to this motion was to be filed by November 12, 2010.

On November 17, 2010, this Court Ordered plaintiff to show cause, in writing and within twenty days, why defendants' pending motions to dismiss (Docs. 9, 16, 20, 24, 29) should not be construed as unopposed and granted for the reasons stated in the motions. (Doc. 31). This Order was sent via certified mail to plaintiff at 3545 Harvey Avenue, Suite 21000, Cincinnati, OH 45229. *Id.* On December 2, 2010, plaintiff filed a response to the Show Cause Order asserting he had not received copies of defendants' motions to dismiss, with the exception of defendant Judge Andrew West's.<sup>3</sup> (Doc. 32). Without providing an explanation for his failure to respond to defendant West's motion, plaintiff included in his response a motion to dismiss defendant Judge West from the proceedings. *Id.* Plaintiff further requested the Court order that the pending motions be served to him via certified mail; plaintiff listed his address on the response as 3545 Harvey Ave., Suite 2100, Cincinnati [sic], Ohio 45229. *Id.*

The Court accommodated plaintiff's request and, by an Order filed December 9, 2010, directed the Clerk of Court to send copies of the pending motions to dismiss to plaintiff via certified mail; the Court granted plaintiff an additional thirty days to respond, to January 11, 2011. (Doc. 34). On December 29, 2010, the certified mailing containing the pending motions was returned as undeliverable after two attempts were made. (Doc. 36). Following plaintiff's second failure to provide responses to defendants' pending motions to dismiss as instructed, the Court issued another Order to Show Cause on January 21, 2011. (Doc. 37).

In this Order, the Court specifically noted a discrepancy between the address plaintiff provided on his complaints, *i.e.* Suite 21000, versus that provided in his response to the initial show cause order, Suite 2100. *Id.* Citing this disparity and an abundance of caution, the Court

---

<sup>3</sup> Plaintiff's response indicates that he, indeed, received the Order to Show Cause (Doc. 31) which was mailed to 3545 Harvey Avenue, Suite 21000, Cincinnati, OH 45229. However, on December 13, 2010, the Order was returned to the Clerk of Court as undeliverable. (Doc. 35).

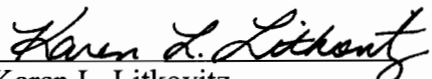
made a third and final attempt to deliver the pending motions (and other filings) to plaintiff, via certified and regular mail, at 3545 Harvey Ave., Suite 2100, Cincinnati, Ohio. *Id.* The Court granted plaintiff a third extension of time, to February 11, 2011, to file responses to the pending motions to dismiss; further, the Court put plaintiff on notice that any failure to comply with the Order would result in a Report and Recommendation to the District Judge that this matter be dismissed for lack of prosecution. *Id.* To date, plaintiff has failed, yet again, to file a response to any of the pending motions to dismiss. There is no indication that plaintiff has not received either the certified or regular mailing.

Plaintiff's failure to prosecute this matter and to obey Orders of the Court warrants dismissal of this case pursuant to Fed. R. Civ. P. 41(b). *See Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991). District courts have the power to *sua sponte* dismiss civil actions for want of prosecution to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962). *See also Jourdan*, 951 F.2d at 109. Though plaintiff is proceeding pro se, as stated by the Supreme Court, "we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *McNeil v. United States*, 508 U.S. 106, 113 (1993).

Plaintiff's repeated failures to follow this Court's orders and to file timely responses indicates he is no longer expending effort to prosecute his lawsuit in a diligent manner as required by Federal Rule 41 and the Local Rules. Accordingly, dismissal of this case for want of prosecution is appropriate.

**IT IS THEREFORE RECOMMENDED THAT** plaintiff's case be **DISMISSED** for want of prosecution and for failure to obey an Order of the Court.

Date: 2/16/2011

  
Karen L. Litkovitz  
United States Magistrate Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JOSEPH LENTINE, III,

Case No. 1:10-cv-474

Plaintiff,

Weber, J.

Litkovitz, M.J.

vs.

CINCINNATI METROPOLITAN  
HOUSING AUTHORITY, *et al.*,

Defendants.

**NOTICE TO THE PARTIES REGARDING THE FILING OF OBJECTIONS TO R&R**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation ("R&R"). That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		A. Signature X <span style="float: right;"><input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</span>	
		B. Received by (Printed Name)	C. Date of Delivery
1. Article Addressed to: Joseph Lentine, III 3545 Harvey Avenue Suite 2100 Cinti, OH 45229		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7002 3150 0000 8389 1030	
PS Form 3811, August 2001		Domestic Return Receipt	
		102095-02-M-1540	

1:10 cv 474 (Doc. 38)